



# San Diego City Attorney **CASEY GWINN**

## **NEWS RELEASE**

**FOR IMMEDIATE RELEASE: September 14, 2004**

**Contact: Maria Velasquez, Press Secretary: (619) 235-5725 (pager & voicemail) [mvelasquez@sandiego.gov](mailto:mvelasquez@sandiego.gov)**

### **CITY ATTORNEY ISSUES OPINION REGARDING DISTRICT FOUR CANDIDATE ELIGIBILITY**

**Statement by City Attorney Casey Gwinn**

Today my Office issued an opinion concerning a number of questions concerning the vacancy in Council District 4. The answers to most of those questions and my legal analysis were already confirmed in last week's Superior Court decision. One very important question, however, remained unanswered by the court; whether former City Council Member George Stevens is eligible to again seek and hold the District 4 office.

After a complete and exhaustive research process on the question, we have come to the conclusion that Mr. Stevens is not eligible to run for the District 4 seat on November 16, 2004.

Based upon a proposed and recommended date of November 30, 2004, for the required special election, I previously advised that Mr. Stevens was eligible to run and hold office. However, the City Council, properly exercising its discretion as found by the Superior Court, set the date of the special election for November 16. That change in the date for the special election re-opened the question of Mr. Stevens's eligibility to seek and hold the District 4 seat.

The reason for the legal controversy relates to the term limits provision in the City Charter. Charter section 12(f) provides for term limits. It concisely and clearly states: "Notwithstanding any other provision of this Charter... no person shall serve more than two consecutive four year terms as a Council member from a particular district. The section goes on to clarify, that a "term" shall be considered in excess of two (2) years). Mr. Stevens has previously served two terms as the District 4 council member. In order to be eligible again, he is allowed to serve only two years or less of the remaining District 4 term of late Council member Charles Lewis.

Based on the new election date set by the Council, a circumstance results in which Mr. Stevens could be elected outright on November 16<sup>th</sup>. The Council would then be required to declare the results of the election before December 4, 2004. Under this scenario, Mr. Stevens would have to serve more than two years of the remaining term. This scenario would violate the City Charter. If Mr. Stevens did not win outright on November 16<sup>th</sup>, he would be eligible to serve the less than two years on the remaining term if he were elected in a run-off election on January 4, 2005. But this does not solve the legal issue with his candidacy.

Permitting Mr. Stevens to seek the office where one set of circumstances would make him ineligible (even though under another he would be eligible) would render the election process a shambles, and potentially

(more)

disenfranchise the voters of Council District 4. A disputed election and an ineligible officeholder could, again, leave Council District 4 without representation. For these reasons, my opinion is that Mr. Stevens is ineligible to seek the District 4 office.

Mr. Stevens has previously served with honor and distinction on the San Diego City Council. His passion and concern for the people of the 4<sup>th</sup> District is unsurpassed. But allowing him to run again, based on our Office's legal analysis, would do a disservice to 4<sup>th</sup> District voters and other potential candidates and risk a violation of the spirit and letter of the term limit provisions.

###

Note: The City Attorney's legal opinion is posted on web site: [www.sandiegocityattorney.org](http://www.sandiegocityattorney.org), click *The Law & You and Legal Opinions*.

